

<p style="text-align: right;">Page 9</p> <p>1 PROCEEDINGS 2 was a Ponzi scheme. They should have to put 3 the money up together with prejudgment 4 interest. Because the standard is the 5 fairness to the creditors. 6 And as to the money coming back, they 7 never met the burden that the money came 8 back. 9 As to the \$13 million, it was their 10 burden under Gredd to show no harm that the 11 money actually did come back and benefited 12 the estate. Actually, they never showed that 13 that \$13 million deposit was not lost in 14 trading, part of the \$90 million or that 15 \$40 million that was lost in trading during 16 that period. They haven't shown it, 17 therefore they can't say anything about it. 18 As to the transfers in '04 and '05, all 19 they've submitted is a schedule showing 20 withdrawals from the G50 accounts. Again, 21 that hasn't shown their burden that the money 22 came back anywhere. Nor was it refunded back 23 through the Ponzi scheme. 24 And they haven't demonstrated that the 25 body of funds actually got the benefit of any</p>	<p style="text-align: right;">Page 11</p> <p>1 PROCEEDINGS 2 you why, even if you accept Gredd, why -- in 3 Gredd there was indebtedness, as Mr. Rich 4 admitted, throughout the time. 5 I guess I am concerned that we're not 6 communicating with you. Because you haven't 7 asked any hard questions to them on the 8 dispositive issues. And so I want to make 9 sure that I have an opportunity with you to 10 make sure that the issues which seem to be 11 the dispositive issues, even if you accept 12 Gredd, you haven't asked him why is that not 13 so. Why is not the Bank of Bermuda transfer 14 of funds to fund dispositive? Why is it not 15 so when the funds are in a bank account in 16 the period? 17 But, again, as to the issue of interest, 18 I think we both agree that the law is 19 discretionary. 20 MR. GRASSI: Okay. The only reason that 21 I raised the question is that we didn't go 22 into the interest issue in that much depth. 23 I think all the other issues were covered 24 comprehensively by counsel by both sides. 25 MR. SCHIFFMAN: I guess, Mr. Grassi,</p>
<p style="text-align: right;">Page 10</p> <p>1 PROCEEDINGS 2 money which did come back, which they haven't 3 proved that it did. 4 So we think that -- I mean, that just 5 gets back into the whole area of whether they 6 met the burden of no harm, no foul. We don't 7 think they have at all. But we think that 8 the standard is in your discretion, 9 exercising your equitable powers, looking at 10 the totality of the circumstances, the fact 11 that the creditors have not had the benefit 12 of this money for this period of time. 13 MR. GRASSI: Okay. Mr. Schiffman, do 14 you have anything to add? 15 MR. SCHIFFMAN: Again, Mr. Grassi, my 16 only concern is that, in the three days of 17 the questions of the panel, you haven't asked 18 him how come, if it's only cash, why it's in 19 transfer? Our concern is how come you 20 haven't asked him, in the three days of 21 arguments, how come the money was transferred 22 from the Bayou fund to the other Bayou funds? 23 Why didn't that work under Gredd? 24 I am concerned -- I guess my comment is 25 why haven't you asked Mr. Rich to explain to</p>	<p style="text-align: right;">Page 12</p> <p>1 PROCEEDINGS 2 that's what troubles me. I don't think so. 3 I hope -- I have now read both transcripts. 4 I hope you have as well. I haven't heard any 5 answer as to why, under Gredd, the absence of 6 indebtedness isn't dispositive, even 7 accepting Gredd. In fact, the Gredd court 8 goes out of its way, despite the Kaiser case, 9 and says, yes, we know Kaiser is the law. 10 But we distinguish ourselves from Kaiser. 11 That's Slide 111 of our stuff. And then in 12 there they say, "We acknowledge that the 13 Kaiser court did not find Schwab's lien to 14 support the transfer liability. However, we 15 find the lien in this case to be 16 significantly different. See Kaiser, noting 17 that the lien existed only to secure amounts 18 due Schwab, which there were none." 19 Mr. Rich said last time in the 20 questions, which was, well, Gredd 21 acknowledges that there is no indebtedness in 22 this case throughout both periods. Then he 23 acknowledges that the Gredd court says there 24 was indebtedness the whole time. And then he 25 said, well, you have to go further than Gredd</p>